

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN,

Plaintiff,

-against-

SHUTTERSTOCK, INC.,

Defendant.

Case No. 1:22-cv-00905 (JHR)

DECLARATION OF ELEANOR M. LACKMAN

ELEANOR M. LACKMAN declares as follows:

1. I am a partner at the law firm of Mitchell Silberberg & Knupp LLP (“MSK”), and lead counsel for defendant Shutterstock, Inc. (“Shutterstock”) in the above-captioned matter. I submit this declaration in support of Shutterstock’s Bill of Costs.¹

2. On October 2, 2023, this Court entered an Order (“Order”) granting Shutterstock’s Motion for Summary Judgment, and denying Plaintiff Elliot McGucken’s (“Plaintiff”) Motion for Summary Judgment, on every claim in the operative Amended Complaint. *See* Dkt. No. 138.

3. On October 12, 2023, the Clerk entered judgment in favor of Shutterstock with costs to be paid by Plaintiff to Shutterstock. *See* Dkt. No. 139.

4. Shutterstock seeks to recover the \$12,990.20 in costs that it necessarily incurred in this case in connection with the printed and electronically recorded transcripts of the depositions of Plaintiff, Shutterstock’s Fed. R. Civ. P. 30(b)(6) witness, and Plaintiff’s expert witness. These costs are itemized in the accompanying Bill of Costs and are taxable pursuant to Rule 54 of the

¹ Shutterstock has concurrently filed a motion for, *inter alia*, attorneys’ fees under the Copyright Act, 17 U.S.C. § 505, and the Digital Millennium Copyright Act, 17 U.S.C. § 1203(b)(5).

Federal Rules of Civil Procedure, Rule 54.1 of the Local Rules of the Southern District of New York, and 28 U.S.C. § 1920.

5. Shutterstock incurred the following costs in connection with deposition transcripts, which Shutterstock necessarily obtained for use in this case and cited in its briefing:

- a. Shutterstock incurred a cost of \$3,839.40 in connection with the transcript of the deposition of Plaintiff Elliot McGucken, which was cited by Shutterstock in its Motion for Summary Judgment. *See, e.g.*, Dkt. No. 96 ¶¶ 40, 44, 49, 51, 53, 54, 70, 76, 81, 85-87. The invoice for this cost is attached hereto as **Exhibit A**.
- b. Shutterstock incurred a cost of \$4,215.25 in connection with the transcript of the deposition of Shutterstock's Fed. R. Civ. P. 30(b)(6) witness, Heather Shimmin, which was cited by Shutterstock in opposition to Plaintiff's Motion for Summary Judgment. *See, e.g.*, Dkt. No. 119 ¶¶ 8, 13, 19-20, 23-24, 30-31. The invoice for this cost is attached hereto as **Exhibit B**.
- c. Shutterstock incurred a cost of \$2,466.80 in connection with the transcript of the deposition of Plaintiff's proffered expert witness, Thomas Maddrey, which was cited by Shutterstock in its Motion to Exclude. *See, e.g.*, Dkt. No. 86 at 4-5, 8-9, 11-15, 17-19. The invoice for this cost is attached hereto as **Exhibit C**.

6. Shutterstock incurred the following costs in connection with video depositions, which Shutterstock reasonably anticipated that it may use at trial, particularly with witnesses domiciled outside the Court's subpoena power:

- a. Shutterstock incurred a cost of \$1,150.00 in connection with the video deposition of Plaintiff Elliot McGucken. The corresponding invoice is attached hereto as **Exhibit D**.
- b. Shutterstock incurred a cost of \$1,318.75 in connection with the video deposition of Plaintiff's proffered expert witness, Thomas Maddrey. The corresponding invoice is attached hereto as **Exhibit E**.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 26, 2023


ELEANOR M. LACKMAN